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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/555,065	10/10/2006	Stanley R. Conston	336-002US	9163
23429 7590 08/04/2010 GREGORY SMITH & ASSOCIATES 3900 NEWPARK MALL ROAD, 3RD FLOOR NEWARK, CA 94560				
EXAMINER VU, QUYNH-NHIU HOANG				
ART UNIT		PAPER NUMBER		
3763				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/555,065

Applicant(s)

CONSTON ET AL.

Examiner

QUYNH-NHU H. VU

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2010.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
4a) Of the above claim(s) 1-29 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 30-35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 17 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

Claims 1-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group I, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/14/10.

Applicant's election without traverse of Group II (claims 30-35) in the reply filed on 07/14/10 is acknowledged.

Priority

This application is a 371 of PCT/US04/11783 filed in 04/16/04, which claims benefit of 60/463,549 filed in 04/16/03.

The limitation "applying suction at a level of at least 4 inches of Hg" of claim 30 is not presented in the prior application. Thus, claims 30-32 are directed to newly presented subject matter and given the effective filing date as 04/16/2004. Claims 33-35 are given the effective filing date as 04/16/2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Stegmann (US 5,486,165).

Regarding claim 33, Stegmann discloses a method for treating Schlemm's Canal of an eye comprising the steps of:

a) inserting a flexible microcannula 20 with an outer diameter 0.15 mm (less than 350 micron = 0.35 mm) into Schlemm's Canal;

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b) injecting a flowable material to expand at least a segment of Schlemm's Canal to facilitate microcannula access, col. 3, lines 5-62, Fig. 4;

c) removing the microcannula 20

d) inserting a microcannula 20' based microsurgical device with an outer diameter 0.15 mm (less than 500 microns = 0.50 mm) into Schlemm's Canal, col. 4, lines 42-49.

e) the method and a device of Stegmann will effecting a modification in the tissue adjacent to Schlemm's Canal increase aqueous outflow, as described in abstract and Summary of the Invention.

Regarding claim 34, wherein step (e) comprises removal of tissues from the inner wall of Schlemm's Canal, Fig. 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stegmann (US 5,486,165) in view of Rainin (US 5,599,330) or John (US 2004/0122352).

Regarding claim 30, Stegmann discloses a method of treating Schlemm's Canal of an eye comprising inserting a flexible microcannula 20, 20', 26 or 35 with an outer diameter 0.15mm (less than 500 micron = 101.6 mm) into Schlemm's Canal. Stegmann further discloses that the aqueous humour which is depicted diagrammatically with the arrows 1, 1' and 2, 2' circulating in the region of the anterior chamber v is supplied in the direction of the arrow 3 to Schlemm's canal 15 and removed from the latter in a manner which is not depicted in details via the upstream tissue 15' (Fig. 4) and via the canalicular venous network, col. 3, lines 23-29. Therefore, the step of applying suction is performing for this treatment. Beside that, it is well-known in the art to apply the step of suctioning in the eyes surgery treatment. Stegmann does not disclose the suction level of at least 4 inches of Hg.

Rainin discloses a device and method of aspiration/suction; wherein the suction level of about 30 inches of Hg or less, col. 4, lines 52-57.

Alternatively, John discloses a method and device of aspiration; wherein the pump is applied at a level of from 30-45 inches of Hg, para [0027].

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method of Stegmann with a suction level of at least 4 inches of Hg, as taught by Rainin or John, in order to remove unwanted fluid or debris from the eye.

Regarding claim 31, the microcannula comprises openings 24 directed toward an inner radius thereof to treat specific tissues adjacent to Schlemm's Canal, Figs. 2-4.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stegmann (US 5,486,165) in view of Rainin (US 5,599,330) or John (US 2004/0122352) and further in view of Bylsma (US 6,221,078).

Stegmann in view of Rainin/John discloses the invention substantially as claimed. Stegmann in view of Rainin/John does not disclose that the microcannula comprises an inner member that acts to remove tissue.

Bylsma discloses a device for treating glaucoma comprising: an outer member 16, an inner member 18, 46 or 50 that acts to remove tissue, see col. 5, lines 54-64 or claim 7 of Bylsma.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Stegmann in view of Rainin/John with an inner member, as taught by Bylsma, in order to remove tissue of eye.

Claim 35 is rejected under 35 U.S.C. 102(b) as being anticipated by Stegmann in view of Grieshaber et al. (US 2002/0013546).

Stegmann discloses the invention substantially as claimed. Stegmann does not disclose the step comprises placing of an implant at least partially residing in Schlemm's Canal.

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Grieshaber discloses a method for improving aqueous humor drainage in an eye. The method comprises the step of placing an implant 35 (Fig. 5), 40 (Fig 8), 45 (Fig. 9), 50 (Fig. 11) in Schlemm's Canal.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method of Stegmann with an implant inserted into Schlemm's Canal, as taught by Grieshaber, for the benefit of improving drainage of aqueous humor in an eye.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quynh-Nhu H. Vu whose telephone number is 571-272-3228. The examiner can normally be reached on 6:00 am to 3:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

/Quynh-Nhu H. Vu/
Examiner, Art Unit 3763